

November 5, 2009

Commissioner Mark Holsten
Minnesota Department of Natural Resources
Box 47
500 Lafayette Road
St. Paul, Minnesota 55155-4047

Re: *In the Matter of the Off-Highway Vehicle Registration, Operation,
and Trespass Citation Issued to Amanda Lee Janssen, Citation No.
141731*
OAH Docket No. 3-2000-20887-2

Dear Commissioner Holsten:

The above-entitled matter came on for a prehearing telephone conference call at 2:00 p.m. on October 22, 2009. The Administrative Law Judge, Conservation Officer Colleen Adam, and Amanda Lee Janssen participated in the telephone conference. With Ms. Janssen on the conference call were Reed Stack and Edward Stack. The parties agreed that no formal hearing would be needed and that the ALJ would make a recommendation in this matter based on the record created during the telephone conference.

The material facts are not disputed. On or about September 18, 2009, Ms. Janssen was a guest at the lake home of Edward Stack, located near Heritage Road on East Crooked Lake in Mantrap Township, Hubbard County.¹ Mr. Stack also owns property near West Crooked Lake. The parcels are approximately three miles apart. Ms. Janssen drove Mr. Stack's class 1 all-terrain vehicle (ATV) from East Crooked Lake along County Road 2 to the property near West Crooked Lake. She was followed by Mr. Stack's son, Reed Stack, who drove a sport-utility vehicle (SUV). On the property near West Crooked Lake, they used the ATV to pull a boat out of the water. Ms. Janssen and Mr. Reed Stack then drove eastbound on County Road 2 back toward East

¹ It is difficult to read the exact date on the copy of the citation that is in the record.

Crooked Lake, with Ms. Janssen driving the ATV and Mr. Reed Stack in the SUV towing the boat.²

Conservation Officer Colleen Adam was parked on Inner Forest Road where it intersects with County Road 2. Officer Adam observed Ms. Janssen driving the ATV eastbound down the middle of County Road 2 at about 40 mph, followed by the SUV. Officer Adam pulled Ms. Janssen over near the intersection of Heritage Road and County Road 2. The ATV headlight was not on, and no registration was displayed on the ATV.³ Despite these other violations, Officer Adam issued only one civil citation, for operating the ATV on a county road, in violation of Minn. Stat. § 84.928, subd. 1 (2008). The penalty for a first violation is \$100.00. Officer Adam issued the citation because landowners in the area have complained to the DNR about the ATV traffic on the road.⁴

Conservation officers are authorized to issue a civil citation to a person who operates an ATV in violation of Minn. Stat. § 84.928.⁵ That statute provides in relevant part as follows:

(a) Unless otherwise allowed in sections 84.92 to 84.928, a person shall not operate an all-terrain vehicle in this state along or on the roadway, shoulder, or inside bank or slope of a public road right-of-way of a trunk, county state-aid, or county highway.

(b) A person may operate a class 1 all-terrain vehicle in the ditch or the outside bank or slope of a trunk, county state-aid, or county highway unless [otherwise] prohibited

...

(g) A person may operate an all-terrain vehicle registered for private use and used for agricultural purposes on a public road right-of-way of a trunk, county state-aid, or county highway in this state if the all-terrain vehicle is operated on the extreme right-hand side of the road, and left turns may be made from any part of the road if it is safe to do so under the prevailing conditions.⁶

Ms. Janssen was driving the ATV on the roadway of a county highway. The ATV was not registered for agricultural use. She and the Stacks argue that it was not safe to operate the ATV in the ditch or on the outside bank or slope of

² Statements of Amanda Janssen and Reed Stack.

³ See Minn. Stat. § 84.928, subd. 2(3) (2008) (a person may not drive or operate an ATV without headlight and taillight lighted at all times if the vehicle is equipped with headlight and taillight); Minn. R. 6102.0010, subp. 3 (2007) (current ATV registration numbers and decal must be displayed on a plate clearly visible on the back of the vehicle).

⁴ Statement of Conservation Officer Colleen Adam.

⁵ Minn. Stat. § 84.775, subd. 1(a)(3).

⁶ Minn. Stat. § 84.928, subd. 1.

the road, because the slope in this area is too steep. In addition, they argue that they frequently use the ATV in this manner and that there is no practical alternative to driving on the road. Finally, they argue that it is unfair that there is an exception for ATVs used for agricultural purposes when there is no exception that would appear to apply to their use of the ATV to retrieve recreational equipment. Mr. Stack also argues that as a taxpayer he should be able to use an ATV on the road if it is necessary in order to access his property near West Crooked Lake.

The only statutory exception that would permit the operation of the ATV in areas other than the ditch or outside bank of the road is contained in Minn. Stat. § 84.928, subd. 6(c)(2). That statute would permit a city or town to enact a resolution or ordinance to allow the operation of ATVs on the shoulder, inside bank, or slope of a county highway, if safe operation in the ditch or outside slope is impossible, and if the county posts the appropriate notice. There is a section of County Road 2 that the County has posted to permit this type of operation, but that section is south of Inner Forest Road and does not include the two-mile section between West Crooked Lake and Inner Forest Road, where Ms. Janssen was driving.⁷ Moreover, it does not appear that it would be appropriate to post that section if in fact there is no safe way to use an ATV on the shoulder or inside bank, as alleged by Ms. Janssen and the Stacks. There is no provision of the law that would permit operation of an ATV down the middle of the public roadway in the manner driven by Ms. Janssen. The Department has substantiated the violation and citation, and the Administrative Law Judge accordingly recommends that the Commissioner affirm civil trespass citation # 141731 and require Ms. Janssen to pay the \$100.00 fine.

I am closing our file in this matter and returning the record. Pursuant to Minn. Stat. § 116.072, subd. 6(e), the Commissioner must wait at least five days after receipt of this recommendation before making a final decision. Within those five days, Ms. Janssen may comment on this recommendation. The Commissioner must send a copy of the final decision to Ms. Janssen. If the Commissioner fails to act within 90 days after the record before the Commissioner closes, this recommendation will become the final decision.

Sincerely,

s/Kathleen D. Sheehy
KATHLEEN D. SHEEHY
Administrative Law Judge

Encl.

cc: Col. Jim Konrad
C.O. Colleen Adam
Ms. Amanda Janssen

⁷ Statement of Conservation Officer Adam.